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**OFFICE OF PETITIONS
A/C PATENTS**

In re Application of
Ornstein, et al.
Application No. 09/305,562
Filed: June 8, 1999
Attorney Docket No. ORN 3.0-004

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ON PETITION

This is a decision on the petition under 37 CFR 1.53(c), filed August 5, 1999, requesting that the above-identified application be accorded a filing date of May 5, 1999, with drawings of Figures 1-11 as a part of the original disclosure. Alternatively, petitioner requests that the application be accorded a filing date of June 8, 1999, the date drawings of Figures 1-11 were filed. The application file was recently forwarded to the Office of Petitions. The Office sincerely apologizes for any inconvenience caused by the delay.

On May 5, 1999, petitioner filed the above-identified application without twenty (20) sheets of drawings containing Figures 1-11. Upon receipt of the Official Filing Receipt, petitioner realized he inadvertently omitted Figures 1-11. Thereafter, petitioner hand-carried twenty (20) sheets of drawings containing Figures 1-11 to Art Unit 3713 on June 8, 1999.

A review of the record reveals, as petitioner admits, that the application papers deposited on May 5, 1999, did not include Figures 1-11. Whether the drawings filed on June 8, 1999, contain new matter or not is not the issue. Either the drawings were present in the Office on the filing date of the application or they were not. If they were not present on the filing date, they cannot be considered a part of the original disclosure of the application. Obviously, Figures 1-11 were not present in the Office on May 5, 1999. Therefore, the application cannot be accorded the May 5, 1999 filing date with the drawings of Figures 1-11 as a part of the original disclosure. The issue of new matter is one appropriately addressed during prosecution of the application after the filing date of the application has been determined.

In the alternative, the petition requests that the application be accorded a filing date of June 8, 1999, the date the drawings containing Figures 1-11 were received in the Office. In view of petitioners' alternative request, the application will be accorded a filing date of June 8, 1999, with the drawings containing Figures 1-11 as a part of the original disclosure.

The petition is granted to the extended indicated above.

The application is being returned to the Office of Initial Patent Examining for correction of the filing date to June 8, 1999, using the twenty (20) sheets of drawings filed on that date.

Thereafter, the application file will be forwarded to Technology Center 3700 for examination in due course with a filing date of June 8, 1999.

Telephone inquiries concerning this matter may be directed to Petitions Attorney Christina T. Tartera at (703) 306-5589.



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